

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GREG HOWARD and NICOLE
HOWARD, a marital community, ISAAC
CHRISTIAN THOMASON, an individual,
and on behalf of all the members of the
class of persons similarly situated,

Plaintiffs,

v.

UNIVERSAL FIDELITY, LP,

Defendants.

CASE NO.

CLASS ACTION COMPLAINT

Plaintiffs, GREG HOWARD and NICOLE HOWARD, a marital community, ISAAC
CHRISTIAN THOMASON, an individual, and on behalf of all members of the class of
persons similarly situated and for cause of action against Defendant UNIVERSAL
FIDELITY, LP, a Texas corporation, allege as follows:

I. PARTIES

1.1 Plaintiffs GREG HOWARD and NICOLE HOWARD are residents of
Seattle, Washington, in King County. The Howards are former customers of Hollywood
Video and have been contacted by Universal Fidelity, LP for the purpose of collecting

1 on a debt.

2 1.2 Plaintiff ISACC CHRISTIAN THOMASON is a resident of Seattle,
3 Washington, in King County. Mr. Thomason is a former customer of Hollywood Video
4 and has been contacted by Universal Fidelity, LP for the purpose of collecting on a debt.

5 1.3 UNIVERSAL FIDELITY, LP is a debt collector that uses instrumentalities
6 of state commerce and the mails for the purpose of collecting or attempting to collect
7 debts owed or due or asserted to be owed or due to Hollywood Video and/or its
8 Successor-in-Interest, Movie Gallery, Inc.

9 1.4 Universal Fidelity is providing debt collection services throughout the
10 United States, including, but not limited to, the Western District of Washington, pursuant
11 to an agreement with Hollywood Video and/or its Successor-in-Interest, Movie Gallery,
12 Inc., and/or First Lien Term Lenders Liquidating Trust.

13 II. JURISDICTION AND VENUE

14 2.1 Original jurisdiction over this matter is conferred on this Court by 28
15 U.S.C. § 1331.

16 2.2 Venue lies in this jurisdiction pursuant to 28 U.S.C. § 1391(b)(2)

17 III. PLAINTIFF'S ALLEGATIONS

18 3.1 Hollywood Video and/or its Successor-in-Interest Movie Gallery, Inc., was
19 a nationwide retailer whose principal business was renting movies and video games.

20 3.2 Hollywood Video and/or its Successor-in-Interest Movie Gallery, Inc., filed
21 for bankruptcy in or around 2009 and entered into a liquidation plan with First Lien Term
22 Lenders Liquidating Trust that was approved by the U.S. Bankruptcy Court for the
23 Eastern District of Virginia in or around October 28, 2010.

24 3.3 Plaintiffs are former customers of Hollywood Video that regularly rented
25 movies and video games from Hollywood Video.

26 3.4 Plaintiffs paid Hollywood Video a fixed sum in exchange for the right to

1 rent movies and video games for a limited rental period of fixed duration.

2 3.5 Plaintiffs were expected to return movies and video games to Hollywood
3 Video at the conclusion of the rental period.

4 3.6 In or around 2009, Plaintiffs attempted to return movies and video games
5 to Hollywood Video at or around the conclusion of the rental period but discovered that
6 the Hollywood Video location from which the movies and/or video games were rented
7 had abruptly ceased business operations and permanently closed.

8 3.7 Plaintiffs received no notification that Hollywood Video intended to cease
9 business operations.

10 3.8 Plaintiffs were not provided instructions or any other opportunity to return
11 movies and/or video games that had been rented from Hollywood Video.

12 3.9 At no fault of their own, Plaintiffs were unable to return movies and video
13 games to Hollywood Video.

14 3.10 In or around 2012, Universal Fidelity began contacting Plaintiffs and
15 demanded payment of the full value of previously rented movies and/or video games.

16 3.11 In its communications with Plaintiffs, Universal Fidelity provided Plaintiffs
17 with no proof establishing the validity of the debt.

18 3.12 In its communications with Plaintiffs, Universal Fidelity offered no
19 explanation of the amount allegedly owed.

20 3.13 In its communications with Plaintiffs, Universal Fidelity identified no basis
21 or authority supporting the collection of the amount allegedly owed.

22 3.14 Plaintiffs had no agreement with Hollywood Video which expressly
23 authorized collecting the full value of previously rented movies and/or video games if
24 Hollywood Video determined to abruptly cease business operations.

25 3.15 Plaintiffs did not, and do not currently, have any desire to purchase
26 previously rented movies and/or video games from Hollywood Video.

1 3.16 Upon information and belief, Universal Fidelity sent debt collection notices
2 to former Hollywood Video customers that had already returned movies and/or video
3 games.

4 3.17 Upon information and belief, Universal Fidelity sent debt collection notices
5 to former Hollywood Video customers that had purchased movies and/or video games
6 from Hollywood Video before Hollywood Video abruptly ceased business operations.

7 3.18 Universal Fidelity is using false, deceptive, or misleading representations
8 regarding the character, amount, or legal status of debts which are invalid.

9 3.19 Universal Fidelity is seeking to collect amounts which are not expressly
10 authorized by the agreement containing the debt or otherwise permitted by law.

11 **IV. PLAINTIFF'S CLASS ACTION ALLEGATIONS**

12 4.1 Plaintiffs have been damaged by the wrongful conduct of Universal
13 Fidelity. Aggregated individual damages are so small as to render individual lawsuits
14 impracticable.

15 4.2 Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure 23
16 on behalf of the following class:

17 All current and former customers of Hollywood Video and/or Movie Gallery, Inc.,
18 who have been contacted by Universal Fidelity claiming debts owed to Hollywood
19 Video and/or Movie Gallery, Inc.

20 Plaintiffs are members of the above described class.

21 4.3 This case is suitable for class adjudication pursuant to Rule 23(b)(2)
22 because Universal Fidelity has acted or refused to act on grounds generally applicable
23 to the class, thereby making appropriate final injunctive relief or corresponding
24 declaratory relief with respect to the class as a whole.

25 4.4 This case is suitable for class adjudication pursuant to Rule 23(b)(3)
26 because questions of law and fact common to the members of the class predominate

1 over any questions affecting only individual members. A class action is superior to all
2 other available methods for the fair and efficient adjudication of the present controversy.

3 4.5 The following questions are common to all class members:

4 4.5.1 Does Universal Fidelity's practice constitute false, deceptive, or
5 misleading representations of the character, amount, or legal status
6 of debts under the FDCPA?

7 4.5.2 Did Universal Fidelity attempt to collect amounts which were not
8 expressly authorized by the agreement containing the debt and
9 were not otherwise permitted by law?

10 4.5.3 Does Universal Fidelity's practice constitute an unfair or deceptive
11 practice under the Consumer Protection Statutes?

12 4.5.4 Should the Court enjoin Universal Fidelity from the practices
13 alleged herein?

14 4.5.5 Should the Court order Universal Fidelity to compensate Plaintiffs
15 for actual damages and costs, including reasonable attorneys' fees
16 under the FDCPA, as a result of Universal Fidelity's debt collection
17 practices?

18 4.5.6 Should the Court order Universal Fidelity to compensate Plaintiffs
19 for statutory damages under the FDCPA as a result of Universal
20 Fidelity's debt collection practices?

21 4.5.7 Should the Court order Universal Fidelity to compensate Plaintiffs
22 for actual damages plus treble, exemplary and/or punitive damages
23 up to the maximum amount permitted by law?

24 4.6 The class of plaintiffs similarly situated is so numerous the joinder of all
25 members is impractical because there are believed to be thousands of members of the
26 Class located across the United States. The exact number of members of the class is

1 presently unknown to Plaintiff but may be easily determined from records maintained by
2 Defendant.

3 4.7 Plaintiffs' claims are typical of the claims of the members of the proposed
4 class of all U.S. consumers who are alleged to have outstanding amounts due to
5 Hollywood Video and/or Movie Gallery, Inc., and were contacted by Universal Fidelity
6 regarding an invalid amount due.

7 4.8 Notice to the class may be accomplished cheaply, efficiently, and in a
8 manner best designed to protect the due process rights of all class members by means
9 of written notices supplied as part of Universal Fidelity's billing procedures for former
10 customers of Hollywood Video and/or Movie Gallery, Inc. and/or in published notice for
11 former customers.

12 4.9 Plaintiffs can and will fairly and adequately represent and protect the
13 interests of the class, as Plaintiff has no interests that conflict with or are antagonistic to
14 the interests of the class.

15 4.10 Plaintiffs have retained competent and experienced legal counsel to
16 prosecute their individual claims and those of the class.

17 **V. CLAIMS**

18 **COUNT I: VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT**

19 5.1 Plaintiff and the members of the Class re-allege each and every allegation
20 contained in Sections I through IV above, and incorporate them herein by reference.

21 5.2 Universal Fidelity is a "debt collector" under 15 USC § 1692a(6).

22 5.3 Universal Fidelity is falsely representing the character, amount, or legal
23 status of the debts allegedly owed by former customers of Hollywood Video in violation
24 of 15 USC § 1692e(2).

25 5.4 Universal Fidelity is using unfair or unconscionable means to collect or
26 attempt to collect any debt allegedly owed by former customers of Hollywood Video that

1 includes the collection of amounts that are not expressly authorized by any agreement
2 creating the debt or otherwise permitted by law in violation of 15 USC § 1692f(1).

3 5.5 As a direct and proximate result of Universal Fidelity's violation of the Fair
4 Debt Collection Practices Act, Plaintiffs and members of the Class have suffered
5 damages in an amount to be proven at trial.

6 **COUNT II: VIOLATION OF CONSUMER PROTECTION ACTS**

7 5.6 Plaintiff and the members of the Class re-allege each and every allegation
8 contained in Sections I through IV above, and incorporate them herein by reference.

9 5.7 Plaintiffs bring a claim pursuant to the substantially similar state consumer
10 protection statutes, all of which were designed to protect consumers against unfair,
11 deceptive, and/or fraudulent business practices ("the Consumer Protection Statutes").¹
12 The Consumer Protection Statutes are modeled after the FTC's consumer protection

13
14 ¹ Ala. Code § 8.19-1 et seq. (Alabama); Alaska Stat. § 45.50.471 et seq. (Alaska); Ariz.
15 Rev. Stat Ann. § 44-1521 et seq. (Arizona); Ark. Code Ann. § 4-88-101 et seq. (Arkansas); Cal.
16 Civ. Code § 1671, Cal. Bus. & Prof. Code § 17200 et seq., Cal. Bus. & Prof. Code § 17500 et
17 seq., Cal. Civ. Code § 1750 et seq. (California); Colo. Rev. Stat. § 6-1-105 et seq. (Colorado);
18 Conn. Gen. Stat. § 42-110a (Connecticut); Del. Code Ann. tit. 6, § 2511 et seq. (Delaware);
19 D.C. Code Ann. § 28-3901 et seq. (District of Columbia); Fla. Stat. Ann. § 501.201 et seq.
20 (Florida); Ga. Code Ann. § 10-1-390 et seq. (Georgia); Haw. Rev. Stat. § 481A-1 et seq. and
21 Haw. Rev. Stat. § 480-1 et seq. (Hawaii); Idaho Code § 48-601 et seq. (Idaho); Kan. Stat. Ann.
22 § 50.623 et seq. (Kansas); Ky. Rev. Stat. § 367.11.0 et seq. (Kentucky); La. Rev. Stat. Ann. §
23 51:1401 et seq. (Louisiana); Me. Rev. Stat. Ann. tit. 5, § 205-A et seq. (Maine); Md. Com. Law
24 Code Ann. § 13-301 et seq. Md. Com. Law Code Ann. § 13-408 et seq. (Maryland); Mass. Gen.
25 L. ch. 93A, § et seq. (Massachusetts); Mich. Stat. Ann. § 445.901 et seq., Mich. Stat. Ann.
26 § 19.418(1) et seq. (Michigan); Minn. Stat. § 325F.68 et seq., Minn. Stat. § 8.31 (Minnesota);
Miss. Code Ann. § 75-24-3 et seq. (Mississippi); Mo. Rev. Stat. § 407.010 et seq. (Missouri);
Mont. Code Ann. § 30-14-101 et seq. (Montana); Neb. Rev. Stat. § 59-1601 et seq. (Nebraska);
Nev. Rev. Stat. § 41.600 and Nev. Rev. Stat. § 598.0903 et seq. (Nevada); N.H. Rev. Stat. Ann.
§ 358:1 et seq. (New Hampshire); N.J. Rev. Stat. § 56:8-1 et seq., N.J. Rev. Stat. § 56:12-1 et
seq. (New Jersey); N.M. Stat. Ann. § 57-12-1 et seq. (New Mexico); N.Y. Gen. Bus. Law § 349
et seq. (New York); N.C. Gen. Stat. § 75-1 et seq. (North Carolina); N.D. Cent. Code § 51-15-01
et seq. (North Dakota); Ohio Rev. Code Ann. § 1345.01 et seq. (Ohio); Okla. Stat. tit. 15, § 751
et seq. (Oklahoma); Ore. Rev. Stat. § 646.605 et seq. (Oregon); Penn. Stat. § 201-1 et seq.
(Pennsylvania); R.I. Gen. Laws § 6-13.1:1 et seq. (Rhode Island); S.C. Code Ann. § 39-5-10 et
seq. (South Carolina); S.D. Codified Laws Ann. § 37-24-1 et seq. (South Dakota); Tenn. Code
Ann. § 47-18-101 et seq. (Tennessee); Tex. Bus. & Comm. Code Ann. § 17.41 et seq. (Texas);
Vt. Stat. Ann. tit. 9, § 2451 et seq. (Vermont); Va. Code Ann. § 59.1-196 et seq. (Virginia);
Wash. Rev. Code § 19.86.010 et seq. (Washington); W.Va. Code § 46A-6-101 et seq. (West
Virginia); and Wyo. Stat. § 40;12-101 et seq. (Wyoming).

1 provisions.

2 5.8 Universal Fidelity violated the Consumer Protection Statutes by falsely
3 representing the character, amount, or legal status of debts allegedly owed by former
4 customers of Hollywood Video and/or Movie Gallery, Inc. and using unfair or
5 unconscionable means to collect debts that are allegedly owed by former customers of
6 Hollywood Video and/or Movie Gallery, Inc. that include the collection of amounts that
7 are not expressly authorized by any agreement creating the debt or are otherwise
8 authorized by law.

9 5.9 As a direct and proximate result of Universal Fidelity's violation of the
10 Consumer Protection Statutes, Plaintiffs and the members of the Class have suffered
11 damages in an amount to be proven at the time of trial.

12 **COUNT III: DECLARATORY JUDGMENT**

13 5.10 Plaintiffs and the members of the class re-allege each and every
14 allegation contained in Sections I through IV above, and incorporate them herein by
15 reference.

16 5.11 A justiciable substantial controversy exists between Plaintiffs and
17 Universal Fidelity over whether Universal Fidelity may lawfully attempt to collect on
18 debts allegedly owed to Hollywood Video and/or Movie Gallery, Inc.

19 5.12 Plaintiffs have existing and genuine rights or interests upon which this
20 Court's judgment may effectively operate with the force and effect of a final judgment at
21 law or decree in equity upon the legal relationships of the parties.

22 5.13 This proceeding is genuinely adversary in character between Plaintiffs and
23 Universal Fidelity.

24 5.14 A declaration by the Court would terminate the controversy between
25 Plaintiffs and Universal Fidelity.

26 5.15 The parties need the Court to settle and to afford relief from uncertainty

1 and insecurity with respect to rights, status and other legal relations among them.

2 5.16 This substantial controversy is of sufficient immediacy and reality to
3 warrant the issuance of a declaratory judgment.

4 5.17 This Court has the power to declare the rights, status and other legal
5 relations between the parties pursuant to 28 USC § 2201.

6 **VI. REQUEST FOR RELIEF**

7 WHEREFORE, Plaintiffs, on their behalves, and on behalf of all other members
8 of the Class, respectfully request the following relief from this Court:

9 6.1 A judgment against Defendant enjoining it from falsely representing the
10 character, amount, or legal status of the debts allegedly owed by customers of
11 Hollywood Video and/or Movie Gallery, Inc.

12 6.2 A judgment against Defendant enjoining it from using unfair or
13 unconscionable means to collect or attempt to collect any debt allegedly owed by former
14 customers of Hollywood Video and/or Movie Gallery, Inc., that include the attempt to
15 collect amounts which were not expressly authorized by the agreement creating the
16 debt and were not otherwise permitted by law.

17 6.3 A judgment in favor of Plaintiffs and the putative class against Defendant
18 for actual damages.

19 6.4 A judgment in favor of Plaintiffs and the putative class against Defendant
20 for additional damages for plaintiffs pursuant to 15 USC § 1692k(a)(2)(B)(i) and for all
21 other class members pursuant to 15 USC § 1692k(a)(2)(B)(ii).

22 6.5 A judgment in favor of Plaintiffs and the putative class and against
23 Defendant awarding Plaintiffs and the putative class their costs of the action, including
24 reasonable attorneys' fees pursuant to 15 USC § 1692k(a)(3).

25 6.6 A judgment in favor of Plaintiffs and the putative class and against
26 Defendant awarding Plaintiffs and the Plaintiff class treble, exemplary and/or punitive

1 damages up to the maximum amount permitted by law, as well as an award of costs,
2 including reasonable attorneys' fees under the Consumer Protection Statutes.

3 6.7 A judgment in favor of Plaintiffs and the putative class for any additional,
4 further equitable or legal relief, which the Court deems appropriate or just.

5 DATED: this 8th day of March, 2013.

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